

REMARKS

Reconsideration of the application, as amended, is respectfully submitted.

Claim 1 has been amended to incorporate the technical features of original claim 3 and to specify "no more than 1.5% glycerol," support for which is found in Examples 1 and 2 on page 10.

Claim 3 has been amended to a maximum molecular weight of 250, support for which is found at page 6 (lines 5-6).

Claim 6 has been amended to address the informality noted by the Office by deleting, without prejudice, "preferably less than 0.1% (w/w)".

Claims 9-12 have been amended to address the informalities noted by the Office by including the upper or lower limits specified in claim 1 as appropriate.

Claims 1-3 and 9-12 were rejected under 35 USC §102(b) as being anticipated by Cole '824. Cole's Runs 89, 90, 93 and 85 contain no more than 1.5% glycerol. In these the freezing point depressants have been calculated to have number average molecular weights $\langle M \rangle_n$ of 297, 299, 310 and 290, respectively. Amended claim 1 is distinguished in claiming a frozen aerated confection having a $\langle M \rangle_n$ below 275. It is respectfully requested that the novelty rejection be withdrawn.

Claim 4 was rejected under 35 USC(a) as being unpatentable over Cole '824 in view of Cole '154. The problem facing the person skilled in the art is the provision of a frozen

aerated confection which is capable of being extruded from a cartridge at a temperature of about -18°C or less. The Office points to no statement in '824 that such a problem may be solved by providing a frozen confection having the presently recited characteristics, especially a $\langle M \rangle_n$ below 275. In fact, '824 teaches away from such a conclusion because, as pointed out above, the freezing point depressants in Runs 89, 90, 93 and 85 all have been calculated to have number average molecular weights of approximately 300. The Office points to no teaching in Cole '154 which remedies the noted deficiencies of Cole '824.


Therefore, we submit that claim 4 is not obvious.

Claims 13-17 were rejected under 35 USC 103(a) as being unpatentable over Cole '824 in view of DeVries '364. As demonstrated above, claims 1-12 are novel and inventive over Cole '824. Therefore, we submit that claims 13-17, which depend from claims 1-12, are also novel and inventive.

Claims 1-17 were provisionally rejected over co-pending application 10/323,303. Although it is not agreed that the rejection is proper, Applicants are willing to submit a terminal disclaimer upon indication of allowable subject matter.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



Gerard J. McGowan, Jr.
Attorney for Applicant(s)
Reg. No. 29,412

GJM:pod
(201) 894-2297